

In the Matter of John Hawthorne
DOP Dkt. No. 2006-2549
(Merit System Board, decided March 8, 2006)

John Hawthorne, a former Senior Tree Climber with the Monmouth County Shade Tree Commission, requests a hearing regarding his separation from employment.

The pertinent facts of the matter are as follows: On November 10, 2005, the appointing authority received notice that the appellant was not in compliance with the terms of a Settlement Agreement he had entered into with the appointing authority on December 1, 2004 to settle a disciplinary matter arising in August 2004. Specifically, the appellant was discharged from a substance abuse program for non-compliance with the program and his failure to participate in individual counseling. The appointing authority immediately suspended the appellant effective November 10, 2005. It served the appellant with a Preliminary Notice of Disciplinary Action (PNDA) dated November 14, 2005, charging the appellant with conduct unbecoming a public employee, violation of Federal regulations concerning drug and alcohol use, other sufficient cause, and violation of Monmouth County's Substance Abuse Policy. A departmental hearing was held on November 28, 2005 and the charges were upheld. A Final Notice of Disciplinary Action (FNDA) was served on the appellant on January 18, 2006. The FNDA indicated that the appellant was resigned in good standing. The appellant timely appealed his separation from employment and requests a hearing.

CONCLUSION

In this matter, the threshold issue before the Board is whether an appointing authority can involuntarily resign an employee "in good standing" as the result of upholding disciplinary charges against that employee in lieu of imposing a disciplinary penalty, and whether the employee is entitled to a hearing on his separation from employment based on a resignation in good standing. *N.J.A.C. 4A:2-2.2* describes the types of discipline that may be brought against an employee. Major discipline comprises removals, disciplinary demotions, and suspensions. *N.J.A.C. 4A:2-2.3* provides the general causes that may subject an employee to discipline. It is noted that causes include the charges brought against the appellant in this instance, namely conduct unbecoming a public employee and other sufficient cause. It is also noted that the appointing authority followed Merit System disciplinary rules in the course of its dealing with the appellant. Specifically, it served him with a PNDA, granted him a departmental hearing and served him with an FNDA. In all but the designation of the "penalty," the appointing authority imposed discipline on the appellant.

The Board finds that an employee who has had disciplinary action brought against him and had the charges upheld, cannot be involuntarily resigned in good standing, such that it could prevent him from appealing his discipline or having a burden of proof that he would not normally bear in a disciplinary appeal.¹ Accordingly, the Board considers the appellant to have been removed by the appointing authority and has timely appealed his removal to the Board. As such, the appellant is entitled to a hearing at the Office of Administrative Law where the burden of proof will be on the appointing authority to prove the sufficiency of the charges and the penalty.

ORDER

Therefore, the appellant's request for a hearing is granted. Further, it is ordered that this matter be referred to the Office of Administrative Law for a hearing.

¹ The Board notes the one circumstance in Merit System rules where an appointing authority may involuntarily resign an employee in good standing. *N.J.A.C.* 4A:2-6.2(f) states that where an employee is resigned not in good standing, the appointing authority may modify the resignation not in good standing to a resignation in good standing. However, as in this matter, since a resignation not in good standing affords an individual the same rights to due process as those found for major disciplinary actions, such an individual would have the ability to appeal the resignation in good standing and the burden of proof would be on the appointing authority.